IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9073 OF 2005

M/s.Dhoot Chemo Plast Pvt.Ltd. .. Petitioner

Versus

M/s.Roots & Herbs (India) Pvt.Ltd..Respondent

Mr.Rameshwar Totala with Anilkumar Patil for petitioner

Mr.H.S.Aglawe for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th January 2006.

P.C.

. Heard Mr.Patil for petitioner and Mr.Aglawe for respondent.

2. Respondent plaintiff had filed suit in the trial Court being Special Civil Suit No.866 of 2000 against petitioner - defendant. Petitioner defendant upon service of writ of summons did not file written statement within the time prescribed by law and, therefore, an order that the matter be proceeded without written statement was passed by the trial court. Petitioner applied for vacating that order by contending that on service of writ of summons, he filed application for better and further particulars and that application being pending the written statement was not placed on record. Mr.Patil appearing for petitioner submits that the written statement as well as counter claim affirmed on 17th December 2004 was sought to be tendered but the Court below rejected the said application vide the impugned order.

3. Contention of the learned Counsel

appearing for respondent is that "no W.S." order was passed on 12th August 2003 and for two years the petitioner was not present. The trial court allowed plaintiff to file his affidavit by way of examination in chief as also all documents to substantiate the pleas in the plaint. Evidence of respondent was closed on 29th April 2004. Thereafter written arguments were also handed over. Judgement was awaited and it is at that stage the present application has been filed.

4. After having considered the rival contentions and perused the order passed by the court below, in my view, trial court was aware that the discretion can be exercised and time can be extended beyond the period prescribed by C.P.C. for filing written statement. It is observed by the trial court that the respondent defendant was negligent. The Advocate as well as defendant company was unrepresented on several dates. The Advocate has been changing from time

to time.

5. Petitioner had pointed out that the application for better and further particulars preferred was pending and that is how written statement was not filed. That apart, the petitioner is a company having its registered office at Aurangabad. Representative of petitioner company could not contact the Advocate concerned and that is how, the matter was not attended. It is in these circumstances, that the discretionary powers were sought to be exercised in favour of petitioner.

6. After considering rival contentions and perusal of relevant materials, in my view, the plea of petitioner that it should be given a chance to substantiate its version as also its counter claim, in the interest of justice, deserves to be accepted but with stringent conditions including payment of costs, quantified

at Rs.10,000/- to be paid within three weeks from today. The written statement is already affirmed and copy is given to respondent. The same shall be accepted by trial court on payment of cost and proof of the same being tendered within three weeks from today. Thereafter, the trial court to accept the written statement and counter claim. The trial court shall endeavour to dispose of the suit on merits and in accordance with law within a period of four months from the date of acceptance of written statement. Needless to state that in case the cost is not paid the suit to proceed further in accordance with law. Petition disposed of.

(S.C.DHARMADHIKARI, J)